



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

June 5, 1996
AO-96-18

Konstantina B. Lukes
Attorney At Law
P.O. Box 341
West Side Station
Worcester, MA 01602

Re: Committee expenditures for legal costs

Dear Ms. Lukes:

This letter is in response to your May 16, 1996 letter requesting an advisory opinion asking whether your political committee may make expenditures for certain legal expenses.

Question. May your political committee pay for legal expenses previously paid by you or incurred in connection with litigation regarding the certification of the vice chair of the Worcester City Council?

Answer. Yes.

Facts. You have stated that you have already paid legal expenses out of your own personal funds and incurred additional legal expenses as a result of litigation by you against the City of Worcester. The litigation concerns the counting of write-in votes during the November 1995 city election in connection with the certification of the position of vice chair of the Worcester City Council. On December 21, 1995, a single justice of the Supreme Judicial Court ordered that "any vote or other action to designate or elect a Vice Chair of the City of Worcester . . . is hereby stayed until further order of this Court." You expect that the matter will be heard in September 1996.

You were elected to a fourth term as a City Councilor at large in November, 1995. In the litigation, you contend that you should be certified as vice chair under Worcester's charter because you were elected city councilor and received the highest number of votes as mayor (other than the incumbent mayor) at the last municipal election. The votes for you as mayor were cast as write-in votes at that election and does not affect your election to the city council but only whether you should be certified as vice chair.

You are planning a fund raising event on June 12, 1996 to help defray the legal cost of this litigation and wish to ensure that you and your committee comply fully with the campaign finance law, M.G.L. c. 55.

Discussion. The campaign finance law provides that political committees organized on behalf of municipal candidates may make expenditures "for the enhancement of the political future of the candidate . . . provided however, that the director shall establish reasonable rules and regulations concerning such expenditures. . ." See M.G.L. c. 55, s. 6.

The office has promulgated regulations at 970 CMR 2.06(6) which authorize expenditures for various legal expenses. In particular, the regulations authorize (a) expenses which have arisen solely as a result of one's interest in being a candidate for public office such as proceedings before the state ballot law commission, (b) expenses where liability stems solely from a person's legal performance of duties as a candidate, and (c) expenses relative to necessary legal action to protect or further the interests of the political committee. See 970 CMR 2.06(6)3. a. - c.

In addition, 970 CMR 2.06(3) authorizes political committees to make expenditures "which are similar to [expenditures authorized by 970 CMR (6)3. a.-c.] and not inconsistent with 970 CMR 2.00, M.G.L. c. 55 or any other law . . ." Therefore, although 970 CMR 2.06(6)3. a.-c. refers to the interest or duties of a "candidate" or "political committee," this office has recognized that legal expenses may also be made in connection with one's interest as an office holder since, in the case of an official who must also run for reelection, an official's duties and responsibilities "may be considered the duties not only of the office holder, but also of a candidate." See AO-95-40.

There is little else that is as fundamental to your interest as a candidate and an office holder than your election to the office or position to which you believe you are entitled. Therefore, any expenditures by your political committee to ensure your election to vice chair through appropriate legal action would comply with the law's requirement that expenditures must enhance your political future and the regulation's more specific requirements since such an expense would, at a minimum, protect or further the interests of your political committee.

For all the above reasons, it is this office's opinion that legal expenses paid, or legal debts incurred, by you in connection with litigation to determine whether you should be vice chair of the Worcester City Council would be a legitimate campaign expense and could be paid for by your political committee.

If you paid or incurred these legal expenses on behalf of your political committee, your campaign finance reports should reflect those expenses or debts (or be amended to reflect those expenses or debts) on the appropriate schedules and on the dates that such expenses were paid or debts incurred. To ensure that your or your committee reports are properly amended or filed, you should contact this office as soon as possible.

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This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a horizontal flourish line.

Michael J. Sullivan
Director

MJS/cp